IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5756 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARIFBHAI J MALEK

Versus

VADODARA MUNICIPAL CORPORATION

Appearance:

MR BC DAVE for Petitioner

MR PRANAV G DESAI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/06/2000

ORAL JUDGEMENT

#. This petition is filed by the Secretary Baroda Plumbers' Association. The petitioner is prayed therein for quashing and setting aside the circular dated 3.7.1998 Annexure-B of the Corporation.

#. This petition has come up for preliminary hearing in the court on 22.7.98. On this date notice was issued to the respondents. After filing of this petition, the circular, aforesaid was came to be modified and the amended circular dated 4.12.1998 was issued by the Corporation. The petitioner was still not satisfied with this amended circular and prayer has been made for the amendment of Special Civil Application and the same has been granted. By this amendment of the petition, the petitioner is praying for quashing and setting of the circular dated 4.12.1998, which is at Annexure-D. Under the circular dated 3.7.98, the Commissioner of the Corporation decided to fix election wards of such licence holder plumbers. It is the case of the petitioner that as per the system prevailing earlier to 3.7.1998 the licence holder plumber is free to carry out water and drainage connection work in any area within the jurisdiction of the Baroda city. It is the grievance of the petitioner that by this circular, area of the work of the licence-holder plumbers has been curtailed. By the amended circular, instead of election ward, the licence-holder plumbers are permitted to work in a particular area.

#. The Special Civil Application is contested by the respondent and a detailed reply has been filed and therein a justification has been given for this circular dated 3.7.1998. However, reply to the amended petition has not been filed by the respondent.

#. The learned counsel for the petitioner contended that the Commissioner of Municipal Corporation has no power to issue this circular unless it is approved by the Standing Committee of the Municipal Corporation. Reliance has been placed by the learned counsel for the petitioner upon Section 373 of the Bombay Provincial Municipal Corporations Act, 1949. It has next been contended that the action of the Commissioner to fix territorial limit of the work for licence-holder plumbers is highly arbitrary and unjustified. No such restriction could have been made as it amounts to violation of Articles 14 and 19(1)(g) of the Constitution of India. Lastly it is contended that before making any change in the established, prevailing practice, the commissioner of the Municipal Corporation should have given an opportunity of hearing to the effected persons and that has not been done in the present case.

#. Learned counsel for the respondents submitted that the territorial limits for the work of licence-holder

plumbers has been widened under the circular dated 4.12.1998 and now nothing substantial survives in this petition. It has next been contended that the provisions of Section 373 of the Act are not applicable to the present case. That section only covers the case of the grant of the licence to the plumbers and for administrative changes, which are to be made in the territorial limits of their work is not covered by that section. However, the learned counsel for the respondents admit that both the circulars dated 3.7.98 and 4.12.98 were not sent for approval to the Standing Committee of the Corporation by the Commissioner. It has next been contended that to avoid any misuse of this licence system and to find out immediately, who has misused this licence, the territorial limits prescribed give effective information. Lastly it is contended that in such matters notice and opportunity of hearing is not required to be given.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. I do not consider it to be appropriate case where to decide this larger issue i.e. the applicability of the provisions of section 373 of the Act in the present case. It is also not necessary at this stage for the court to go on the justification, which has been furnished in the reply to the Special Civil Application by the respondents for issuance of these circulars. I find sufficient merits in the contention of the learned counsel for the petitioner that before the Commissioner of the Corporation decides to change the existing established prevailing practice, it is just, reasonable and equitable that the effected persons are to be given a reasonable opportunity of making submission of their case. It is not in dispute that prior to 3.7.1998, the licence-holder plumbers were free to do the work of water and drainage connection throughout the city of Baroda. Now, by this circular whether dated 3.7.98 or 4.12.98 their territorial limits of work has been curtained. Naturally it may result in serious civil consequences and before any such decision is taken, it is expected of the Corporation, which is now a constitutional authority to give the effected persons a reasonable opportunity of hearing.

#. The learned counsel for the respondents does not dispute that before passing of the circular dated 3.7.98 or 4.12.98 the Commissioner of the Municipal Corporation, Baroda has not given any notice or opportunity of hearing to the effected persons.

#. The circular dated 3.7.98 is now no more in force. It stood superceded by the circular dated 4.12.98, which is now in operation.

##. In the result, this Special Civil Application succeeds and the same is allowed and the circular of the Corporation dated 4.12.98 at Annexure-D is quashed and set aside. The Municipal Commissioner of Baroda is free to decide the matter afresh after giving a notice and opportunity of hearing to all effected persons. For this, the Commissioner of the Municipal Corporation, Baroda is directed to invite the objections from the effected persons by a public notice in the newspaper of wide circulation in Baroda City and in response to this notice whosoever i.e. licence-holder plumbers present remain may be heard and then decision may be taken. Rule is made absolute accordingly with no order as to costs.

(S.K.Keshote, J.)
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